

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:99-00012-03

ERIC DEWAYNE SPENCER

MEMORANDUM OPINION AND JUDGMENT ORDER

Pending before the Court is Defendant's motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce his sentence based on a subsequent reduction in the applicable sentencing guideline. (Doc. # 1201). On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on October 7, 2011, this case was designated for Standard consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, addendum to the PSI received from the Probation Office, and any materials submitted

by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

The United States has indicated that it does not object to a reduction in the defendant's sentence that is within the revised guidelines range.

Based on the foregoing considerations, defendant's Motion is **GRANTED** to the extent it seeks a sentence reduction. The Court **ORDERS** that Defendant's base offense level be reduced by four levels, resulting in a new total offense level of 34. It is further **ORDERED** that Defendant's previous sentence be reduced to 168 months. This Order is subject to the prohibition contained within U.S.S.G. § 1B1.10(b)(2)(c). Furthermore, in addition to the conditions of supervised release previously imposed, defendant will be required to serve 90 days in a community confinement center as a special condition of supervised release.* Defendant's motion for expedited review is **DENIED** as moot.

The Clerk is DIRECTED to send a copy of this Memorandum Opinion and Judgment Order, as well as the Order Regarding Motion for Sentence Reduction (AO 247) filed this day, to defendant, the Federal Public Defender, counsel of record, the United States

* Defendant has conferred with Assistant Federal Public Defender for the Southern District of West Virginia, Christian M. Capece, and has waived his right to a hearing regarding the proposed modification. That waiver was filed on November 7, 2011. See Doc. # 1201, Exhibit A.

Marshal for the Southern District of West Virginia, and to the United States Probation Office for forwarding to the Sentencing Commission and Bureau of Prisons.

It is SO ORDERED this 10th day of November, 2011.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge